

Claimant has worked as a fire fighter and emergency technician officer for the City of Concordia for approximately twenty (20) years. After working at the scene of an

emergency on August 21, 1994, claimant's back began to hurt. The Appeals Board finds it is more probably true than not that claimant injured his back while helping to move a semi-truck's saddle fuel tank or lifting a trash barrel full of fuel, both activities performed in the course of his employment with the respondent on the date in question. Claimant reported his injury the following day.

Not knowing the severity of his back injury, claimant postponed seeking medical treatment for approximately seven to ten (7-10) days. Claimant then sought the services of a local chiropractor who diagnosed a bulging or herniated disc in the lower lumbar spine. Claimant relayed the diagnosis to the respondent. Because the chiropractor felt that claimant's pain was so severe and medication was needed, he referred claimant to a local physician, Dr. Goff. Dr. Goff noted in his records that he did not understand how claimant was continuing to work because he was holding his back in a rigid position and complained of considerable pain upon any motion. Initial tests performed by Dr. Goff indicated nerve root involvement in the lumbar spine. Dr. Goff prescribed pain medications that helped considerably.

On September 30, 1994, claimant reported shooting pains in his legs to Dr. Goff. Shortly thereafter, on October 4, 1994, Dr. Goff prescribed an epidural steroid injection and advised claimant he would receive more as needed. The epidural helped to relieve claimant's symptoms. Although not entirely asymptomatic, his symptoms subsided to mild back ache and left leg pain.

Claimant experienced a severe flare-up of his symptoms on October 15, 1994, when he knelt down to pick up a small object. During this maneuver, claimant did not bend his back in any manner. As a result of the severe pain, claimant sought immediate treatment in the hospital emergency room in Mankato, Kansas. Thereupon, Dr. Goff immediately referred claimant to Salina orthopedic surgeon, Alan L. Kruckemyer, M.D. and Salina neurosurgeon, Ali B. Manguoglu, M.D., to evaluate the need for surgery. Shortly thereafter claimant underwent surgery to repair herniations in the lower lumbar spine.

Claimant testified that his symptoms progressively worsened from the date of accident in August 1994 until the kneeling incident in October. Claimant also presented and placed into evidence the office notes or letters of Dr. Goff, Dr. Kruckemeyer, and Dr. Manguoglu. Dr. Goff indicates in his office notes that the incident in October was a continuation of the initial injury and merely an exacerbation of his symptomatology. Dr. Kruckemeyer indicates in his letter of December 29, 1994, that the herniated disc and related surgery was directly related to the initial incident in August. Dr. Manguoglu writes in his letter of February 6, 1995, that the back surgery was a natural consequence of the work-related accident in August. Based upon this evidence, the Appeals Board finds that it is more probably true than not that claimant did not experience a separate and distinct accidental injury on October 15, 1994, but the symptoms and surgery are more probably than not related to the work-related injury on August 21, 1994, for which claimant is entitled workers compensation benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the finding of the Administrative Law Judge that claimant had experienced a second and distinct accidental injury on October 15, 1994, and, therefore, was not entitled to medical and temporary total disability benefits should be, and hereby is, reversed; and that this case should be, and hereby is, remanded to the Administrative Law Judge for additional proceedings not inconsistent with the findings made herein.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
Jeffrey E. King, Salina, KS
George R. Robertson, Administrative Law Judge
George Gomez, Director